

## **SECTION-BY-SECTION ANALYSIS OF THE FEDERAL RAILROAD SAFETY IMPROVEMENT ACT**

Section 1 would provide that this proposal may be cited as the “Federal Railroad Safety Improvement Act.”

Section 2 would provide that references in the proposal to the amendment or repeal of a section or other provision are references to a section or other provision of title 49 of the United States Code, unless the proposal explicitly states that the section or other provision is from a different source.

Section 3 would list the section and title headings of each section and title of this proposal, in the order in which the sections and titles appear.

### **TITLE I—RULEMAKING, INSPECTION, AND ENFORCEMENT AUTHORITY**

Section 101, “National Crossing Inventory,” would establish a new section 20154 to require railroads and States to provide the Secretary with current information regarding highway-rail crossings and pedestrian crossings (intersections of dedicated pedestrian pathways and railroad tracks). Crossing information has been collected by the Department of Transportation since 1974, and maintained in a national database called the “US DOT National Crossing Inventory File” (Inventory) since 1975. Part of the information in the Inventory about a crossing is supplied by the railroad that operates through the crossing, and the rest of the information is supplied by the State where the crossing is located. For example, with regard to public highway-rail crossings, the railroad typically provides such information as the volume of railroad traffic through the crossing and the type of warning device at the crossing, and the State typically provides such information as the volume of highway traffic through the crossing.

The primary purpose of the Inventory is to serve as a uniform computerized database on crossings throughout the country that can be merged with other collected data, including FRA’s accident/incident database, and used to promote crossing safety. Public agencies (e.g., States) and private organizations (e.g., railroads) that are responsible for crossing safety analyze information in the Inventory for planning and implementation of crossing-improvement programs such as the “Section 130” program, which provides Federal funds to install or improve warning devices at crossings or to eliminate crossings altogether. See 23 U.S.C. 130. In addition, Federal, State, and local law enforcement personnel may use the Inventory to identify especially hazardous crossings on which to focus their inspection and enforcement efforts. Since the Inventory is the only nationwide database on the characteristics of crossings, it is also used extensively by the Department, States, railroads, and researchers for crossing safety studies, some of which have helped FRA formulate regulatory actions.

Unfortunately, some crossings have not been reported to the Inventory, and for crossings that have been reported, many entries concerning them are not being adequately updated by the States and the railroads. As a result, decisions about how to allocate scarce safety, inspection, and enforcement resources must be made by the States and others on the basis of outdated or incomplete information. The National Transportation Safety Board’s Safety Recommendation H-01-42, dated January 22, 2002, which arose out of a fatal crossing collision involving a school bus, detailed some of the shortcomings of the Inventory and indicated that “[b]ecause the States and others rely on this inventory

for determining hazards and predicting accidents at grade crossings, inaccurate information can lead to invalid assessments” of the relative level of hazard at one particular crossing as compared to another.

To assure that the most hazardous crossings are identified and their deficiencies are remedied, it is imperative that the Department receive initial reports on crossings that have not been reported to the Inventory and that the Department obtain current information on all crossings on a systematic and cyclical basis. To achieve that objective, section 101 would amend chapter 201 of title 49 by adding a new section 20154 to require that railroads provide the Secretary of Transportation with three kinds of reports. First, initial reports with regard to previously unreported crossings, including new crossings, would be required within six months after the enactment of the proposal or within six months of a new crossing becoming operational, whichever occurs later. Second, updates to the Inventory would be required on a periodic basis beginning no later than 18 months after enactment, and continuing on a schedule no less often than by September 30 of every third year thereafter, or as otherwise specified by the Secretary. Third, for crossings that are transferred to other ownership, notice to the Secretary would be required from the seller within three months of the sale or within 18 months after enactment of the Federal Railroad Safety Improvement Act, whichever occurs later, or as otherwise specified by the Secretary. Section 101 would also amend section 130 of title 23, United States Code, by adding a new subsection (k) to require that States provide the Secretary of Transportation with initial reports to the Inventory and periodic updates to the Inventory on the same schedule.

The particular information to be included in these reports (e.g., the required data fields) and the entity responsible for providing the data would be specified by the Secretary in either of two ways. Initially, the requirements would be those existing requirements set forth in the edition of FRA’s Highway-Rail Crossing Inventory Instructions and Procedures Manual (Manual) that is in effect upon enactment of section 20154 and 23 U.S.C. 130(k). Post-enactment, if the Secretary exercised the rulemaking authority provided by section 20154 and 23 U.S.C. 130(k), prescribed regulations to implement those statutory provisions, and those regulations became effective, then those regulations would control.

Each railroad would have to provide an initial, periodic, and, if applicable, change-of-ownership report on each crossing through which it operates, or else see to it that the same information is provided to the Secretary by another railroad that operates through the same crossing. If more than one railroad operates through a single crossing and the Secretary does not have on file already, or receive within six months after enactment of the proposal, a required initial report concerning the crossing, then each of the railroads that operates through the crossing would be subject to liability for the omission. However, if one of the railroads has already made the required initial report to the Secretary concerning the crossing, then the other railroad would not need to report that information again.

The Secretary would be authorized to determine which data elements concerning a crossing shall be supplied by the railroad and which shall be supplied by the State. To illustrate, in determining the particular information that must be included by railroads and States in the provided reports, the Secretary might anticipate that railroads would supply all data elements regarding private crossings and that railroads would supply railroad-related data elements concerning public crossings and that the

carriers would then transmit the Inventory form (or the same data in a form permitted by the Manual or the implementing regulations, as applicable) to the applicable States for the States to provide highway-department information. For each public crossing located within the State, it is expected that the State would then ascertain and report during its portion of the updating process such matters as changes in the volume of motor vehicle traffic (annual average daily highway traffic) since the last submission of data to the Inventory for that crossing. The States and railroads would then transmit to the Secretary the completed Inventory data in a form permitted by the Manual or the implementing regulations, as applicable, for inclusion in the Inventory.

Section 102 would re-enact the Secretary of Transportation's existing authority in section 20103(a) to issue regulations and orders governing "every area of railroad safety" and add a new provision imposing a contingent duty on the Secretary, when issuing railroad safety regulations and orders that affect the security of railroad operations, to coordinate with the Secretary of the department having transportation security responsibility under section 101 of the Aviation and Transportation Security Act (ATSA), Pub. L. No. 107-71 (49 U.S.C. 114) should that authority lie outside the Department of Transportation. Currently, the Secretary of Transportation coordinates transportation security generally under ATSA through the Secretary's delegate, the Transportation Security Administration (TSA); however, Congress may transfer that ATSA authority to a different department, such as the President's proposed Department of Homeland Security. The Department of Transportation believes that the existing language of section 20103(a) provides the Secretary of Transportation with plenary authority to address any hazards to life and property, regardless of the source of the potential threat, that may arise in the context of railroad operations. These threats include not just threats to trains, passengers, employees, communities near railroads, and railroad property, but also threats to the general public that could be posed by exploitation of railroad operations and equipment by terrorists. The Secretary has delegated this authority to issue regulations and orders under section 20103(a) to the Federal Railroad Administration (FRA).

Often, safety and security are inextricably intertwined. The inseparability of safety and security is illustrated by the following examples of rules issued by FRA before ATSA was implemented:

- rules on Passenger Train Emergency Preparedness (49 C.F.R. Part 239) that require passenger railroads to conduct detailed planning for emergency situations, which are defined to include a "security situation" such as a bomb threat. (See 49 C.F.R. 239.7.)
- an interim final rule on foreign dispatching of railroad operations in the United States that is based in part on the agency's concerns about the security of foreign dispatching facilities. (See 66 Fed. Reg. 63942, 63949-63950, Dec. 11, 2001, promulgating new 49 C.F.R. Part 241.)
- various regulations against tampering with safety and operational monitoring devices (e.g., 49 C.F.R. 218.51-218.61 and 236.4).

In each of these cases, rules focused on the safety of railroad operations necessarily have an impact on security and are to some degree motivated by security concerns.

Further, FRA has issued many other safety regulations, not explicitly based on security concerns, but that have a bearing on security. These safety regulations concern, e.g., the following subjects:

- track;
- structures;
- equipment;
- signal and train control systems; and
- employee qualifications.

(See 49 C.F.R. Parts 213, 215, 231, 232, 238, 234, 235, 236, and 240.) FRA may find it necessary to issue amendments of these safety regulations or entirely new safety regulations or orders that have security implications.

Drawing clear lines between safety and security aspects in these rules and orders could be impossible, and having separate safety and security rules on each subject would mean redundant efforts with possibly conflicting results. Therefore, if the authority under ATSA to coordinate transportation security generally is transferred from the Secretary of Transportation to the Secretary of another department of the Executive Branch (“any successor department”), coordination of FRA’s safety actions with security experts in that department seems essential. Section 102 would make clear that the Secretary of any successor department would play a coordinating role when the Secretary of Transportation issues rail safety rules and orders that affect security. For example, where a security threat creates an emergency situation involving a hazard of death or injury in connection with railroad operations, the Secretary of Transportation’s authority to issue emergency safety orders under section 20104 may be an extremely useful tool, when an order is crafted in coordination with the security experts at any successor department, in addressing this threat to railroad safety.

In addition to drafting and enforcing relevant safety rules that may have security impacts, FRA plays two other roles in railroad security in conjunction with TSA and would play similar roles in relation to any successor department. First, FRA works with the railroad industry and its security experts to review the industry’s security risk assessments and provide guidance and direction regarding appropriate security enhancement measures. Second, FRA acts as a clearing house for security information for the railroads. FRA is working with several industry-initiated working groups to facilitate the flow of security information. As requested by railroad police chiefs, FRA is working to enhance intelligence-sharing among railroad police departments and other law enforcement agencies. These FRA activities, and FRA’s necessary coordination with TSA’s security experts, are expected to continue with the security experts of any successor department if TSA’s functions are absorbed by such a department.

In light of the tragic events of September 11, 2001, the need to address security issues has suddenly intensified. The Secretary may find it necessary to issue, through FRA and in coordination with the Secretary of any successor department, safety orders and regulations, perhaps of an emergency nature, that have an effect on the security of railroad operations. Re-enactment of the existing language of section 20103(a), along with the new language on the Secretary of Transportation’s contingent duty to coordinate with the Secretary of any successor department, should such a department be established,

will help ensure timely action and proper coordination of the government's rail safety and security expertise.

Section 103, "High-speed rail noise regulation," would amend chapter 201 of title 49, United States Code, by adding a new section 20155 that requires the Secretary of Transportation to set standards governing the maximum permissible sound energy emissions from high-speed rail operations. The Environmental Protection Agency (EPA) has issued noise emission standards for interstate railroads pursuant to the Noise Control Act of 1972 (40 C.F.R. Part 201). The EPA regulations establish maximum noise emission levels for specific kinds of (i) on-track railroad equipment, (ii) railroad operations, and (iii) railroad facilities. As an example, certain moving locomotives may emit a maximum of 90 decibels when measured at 100 feet from the track centerline. 40 C.F.R. 201.12(b). These standards have, in effect, become the noise-design criteria for railroad equipment in the United States, and there has been little or no problem with compliance by the traditional freight and passenger rail equipment. Recent research for FRA, however, has shown that, at train speeds greater than 150 mph, aerodynamic noise becomes the dominant noise source, and all known high-speed rail equipment exceeds the EPA standards in the 150 mph to 200 mph range. Moreover, research for FRA has shown that aerodynamic noise from operations at speeds of more than 150 mph does not lend itself to being reduced to the levels covered by the existing standards.

Under this provision, the Secretary, with the concurrence of the Administrator of the EPA, would be required to issue a regulation that specifies the maximum permissible sound energy emission from the right of way due to the passage of a high-speed train, as opposed to the specification of maximum permissible noise emission levels for specific pieces of rail equipment. This approach would appropriately account for the shift from equipment noise to aerodynamic noise as the dominant source of noise above 150 miles per hour. For high-speed trains, it is likely that critical elements of noise control will be on or adjacent to the right-of-way rather than on the equipment. The specification of maximum sound energy level is consistent with the current European approach to the regulation of high-speed rail operation noise. In establishing the maximum permissible sound energy level for high-speed rail operations, the Secretary would be authorized to consider the maximum levels permitted by countries with extensive experience with high-speed rail operations as well as the maximum sound exposure levels resulting from average or typical U.S. rail freight trains operating in compliance with existing EPA standards.

Standards established by the Secretary under to this section would replace the standards issued under the Noise Control Act of 1972 only when the rail equipment is operating in excess of 150 mph. At all other times, the equipment would be required to conform to the noise standards applicable to railroad equipment (40 C.F.R. Part 201).

Section 104, "Railroad Accident and Incident Reporting," would amend section 20901(a) of title 49, United States Code, in two ways. First, section 104 would eliminate the requirement that railroads' reports to FRA regarding accidents and incidents on their properties be made under oath. FRA has interpreted this requirement as necessitating that the reports "include an oath or verification, made by the

proper officer of the reporting railroad, as provided for attestation on the form.” 49 C.F.R. 225.21(b). In turn, FRA’s form FRA F 6180.55, “Railroad Injury and Illness Summary,” requires that it be notarized. The oath and notarization requirement causes unnecessary expense and delay, and is an obstacle to filing reports electronically. Second, section 104 would allow the Secretary of Transportation to specify the frequency with which the reports must be filed, providing discretion to set different reporting requirements for different classes of railroads or different types of situations and to permit a reduction in the frequency of filings. Although the Secretary would be authorized to set any reporting interval, the Secretary would be expected to require reports at least on a quarterly basis.

Section 105 is intended to increase FRA’s authority to conduct oversight of railroad radio communications in order to prevent and investigate railroad accidents. This section would permit Federal railroad safety inspectors and investigators, for the purpose of carrying out the Secretary’s railroad safety responsibilities under the Federal railroad safety laws, including the hazardous materials transportation laws, to monitor a radio communication over a frequency authorized by the Federal Communications Commission (FCC) to a railroad, while the inspectors and investigators are outside the presence of the parties to the communication. It should be noted that railroads require their employees to use the company radio exclusively for railroad operations and prohibit them from using the company radio for any unnecessary or irrelevant communications, such as personal, non-business conversations. See Rule 700, “Radio Use,” and Rule 709, “Prohibited Transmissions,” Northeast Operating Rules Advisory Committee Rules, which apply to more than 30 railroads in the United States. Section 105 covers only a communication by radio over a frequency that the FCC authorizes to a railroad. See FCC regulations at 47 C.F.R. Part 90, especially sections 90.35(b)(2)(i), (b)(3), and (c)(50) and Subpart G. Frequencies lying between 160.215 and 161.610, inclusive, in the Industrial/Business Pool are authorized to railroads. See 47 C.F.R. 90.35(b)(2)(i) and the Industrial/Business Pool Frequency Table at 47 C.F.R. 90.35(b)(3). Section 105 of this proposal does not apply to railroads’ communications by such means as cellular or cordless telephones. The monitoring of railroad radio communications would have to be conducted at reasonable times. For purposes of new subsection 20107(c) and section 20107 as a whole, the term “at reasonable times” is defined in new subsection 20107(d) as whenever the railroad being inspected or investigated is performing its rail transportation business.

Railroads use their dedicated radio frequencies to control, and promote the safety of, various types of on-track operations. Radio communications are used in at least six major ways, in connection with road train and switching operations. (See FRA’s July 1994 report to Congress entitled “Railroad Communications and Train Control” (Report), pp. 22-25, for a more detailed description of four of these uses.)

- First, railroads use radio to transmit movement authorities from the dispatcher directly to the crew in the cab of the locomotive. The train crew operates the train, but the dispatcher orders where the train will go, at what time, by what route, and at what speed. For example, if the method of train operation for the given segment of track is Track Warrant Control, a typical method, then the dispatcher communicates the movement authority to the train crew not in writing, but orally.

- Second, radio is used to communicate intra-crew directives, that is, communications on when to go, stop, back up, slow down, etc., both in road trains and in switching operations.
- Third, radio is used to relay information from one crew to another crew. Train-to-train communication is especially important when traffic conditions result in more than one train in the block or when a train stops because of work or the need to be inspected. Train-to-train communication is a valuable method to prevent collisions, to coordinate use of switches, sidings, etc., and to communicate observations of defects on passing trains.
- Fourth, radio is often used to transmit wayside detector information. “Reliance on radios to transmit automatic detector warnings for hot journal detection, high-wide or shifted loads, dragging equipment, etc., has become the norm. The safety importance of such devices has increased with elimination of manned cabooses, and railroads employ ‘talking’ detectors on nearly all major corridors across the country.” Report at 24.
- Fifth, radio is used to transmit information from wayside employees to crews or dispatchers regarding defects on passing trains. Railroad operating rules typically require railroad employees regardless of craft to observe passing trains for defects and to communicate the results of their observations.
- Sixth, radio provides a way for trains in distress to summon help immediately and a way for employees to prevent accidents or mitigate their severity by alerting dispatchers and crews to track obstructions or washouts, etc. “Not only can emergency responders be notified, but other trains approaching the distressed train can take necessary precautions (e.g., slowing or stopping until it is ascertained that adjacent tracks are clear). The use of voice radio expedites the flow of information in emergency circumstances.” Report at 25.

In addition to being used in connection with road train and switching operations, radio is also used in “other aspects of railroad work, particularly the coordination of maintenance and inspection of railroad track and structures and railroad signal and train control signals with on-track movements.” Report at 1, f.n. 1. A dispatcher uses radio to transmit to a roadway worker in charge of a particular roadway work group the group’s working limits (the group’s authority to use in a particular way a particular segment of track for a particular time). See FRA regulations on roadway worker protection at 49 C.F.R. 214.319-214.325. Train crews use radio to communicate with the roadway worker in charge in order to get authority to move the train through a work area under the control of the roadway work group. For example, a train crew’s movement authority may tell the crew that when it reaches Control Point 42, it must receive permission from the roadway worker in charge in order to proceed.

Because radios used in connection with railroad operations are critical to railroad safety, both the railroads and FRA have prescribed rules governing their use. FRA’s principal regulations controlling radio communications related to railroad operations are at 49 C.F.R. Part 220, Railroad Communications. The following provisions are a few examples of mandatory Federal or company procedures to be followed when conducting or responding to some of the various types of railroad radio communications described above.

With regard to dispatcher-crew communications, 49 C.F.R. 220.61 requires, inter alia, that the dispatcher call the addressee of a mandatory directive and state his intention to transmit it; that the employee to receive and copy the directive state his name, identification, location, and readiness to

receive and copy the directive; that the receiving employee copy the mandatory directive in writing and repeat it in its entirety to the dispatcher; and that the dispatcher verify the accuracy of the repeated mandatory directive. Further, under that section, a mandatory directive that has not been completed, that does not comply with Part 220, or that does not comply with the railroad's operating rules may not be acted upon. This rule also applies to dispatchers' radio communications with a roadway worker in charge.

With regard to intra-crew communications, 49 C.F.R. 220.49 requires, *inter alia*, that when radio communication is used in connection with the backing of a train, the employee directing the movement must state the total distance of the movement, the movement must stop at the halfway point, and the movement must not continue unless additional instructions are received. Compliance with this rule by the employee directing the movement and the engineer at the controls of the locomotive reduces the risk of accident and injury during such backing movements.

With regard to communications concerning emergency situations, 49 C.F.R. 220.47 requires that an initial emergency radio transmission be preceded by the word "emergency," spoken three times, and that the frequency must be kept clear of all non-emergency traffic for the duration of the emergency, and 49 C.F.R. 220.13 contains further requirements. These provisions also apply to radio communications by roadway workers.

With regard to radio transmissions from wayside employees or wayside defect detectors to train crews, the railroad's own operating rules require that a crewmember repeat the information received, and FRA regulations require that railroad operating employees be trained and tested in the railroad operating rules. See 49 C.F.R. Part 217.

Current law arguably precludes FRA inspectors from monitoring these safety-critical railroad radio communications without the presence of a railroad employee who is an authorized sender or receiver of the communication. This is an impediment to the fulfillment of the rail safety objectives of accident investigation and accident prevention. Such objectives are ordinarily fulfilled by means of the safety inspection of railroad operations on a daily basis and the enforcement of the rail safety laws. Of course, although the information obtained is to be obtained in order to ascertain facts relevant to the safety of the railroad operation being monitored, what railroad safety inspectors learn from the monitoring may also inform their contributions to later safety rulemaking activities, such as possible revisions to the railroad communications regulations at 49 C.F.R. Part 220.

With regard to routine safety inspections by FRA to ascertain compliance levels and to promote safety generally, through such partnership efforts as the Safety Assurance and Compliance Program, free access to the railroad's radio communications would greatly improve (1) the efficiency of those inspections, (2) the accuracy of their results, and (3) the effective redeployment of FRA's limited inspection resources based on those more accurate results. First, this expanded access would help an inspector, who on a given morning has an option of going to one of three terminals, figure which terminal is likely to have the most arrivals and departures. FRA inspectors of all disciplines--whether operating practices, hazardous materials, track, signal and train control, or motive power and equipment--would be able to observe a larger number of relevant railroad operations more expeditiously at lower cost to



the taxpayer. Second, the expanded access, which would permit inspections while off railroad property, would yield a truer picture of compliance levels. Given the present circumstances, an FRA inspector must monitor railroad radio communications in the presence of an authorized sender or receiver. Typically, when an FRA inspector arrives on railroad property, railroad users of radio are often informed by their coworkers to be guarded as they are being monitored by an FRA inspector. In this situation, having been alerted to FRA's presence, users tend to be on their best safety behavior. If compliance is perfect, it is hard to know whether it would have been perfect without an obvious Federal audience. Inspectors may be lulled into trusting the appearances and not be able to detect latent safety problems; they may simply discuss their inspections with a railroad supervisor or provide a written inspection report informing the railroad about the problems they do discover, instead of recommending enforcement action such as a civil penalty. Third, based on the inspectors' too rosy reports about a particular inspection point, they may be assigned to visit other points that are in fact relatively safer and less in need of their attention.

The arguable constraints of current law on monitoring railroad radio communications at a third point interfere not only with inspections but also with enforcement. FRA has a wide range of enforcement tools available to deter violations of the rail safety laws and regulations. Above all, these constraints make it difficult to detect and prove violations of FRA's railroad communications rules, such as those essential provisions discussed earlier. The limitations also impair enforcement of other railroad safety laws, as illustrated by the following examples:

- A train dispatcher might use the railroad's dedicated radio frequency to order a train crew facing delays en route to a terminal to exceed statutory limits on their hours of service (49 U.S.C. ch. 211).
- A train dispatcher might direct a train crew by radio to leave a terminal before a car with a broken handhold has been repaired, in violation of 49 C.F.R. Part 231, or before the test of the train's air brakes has been completed, in violation of 49 C.F.R. Part 232.

For all of these reasons, section 105 of the bill is intended to create an exception to prohibitions (such as those contained in 47 U.S.C. 605 and in 18 U.S.C. ch. 119), for Federal inspectors administering the Federal railroad safety laws at 49 U.S.C. subtitle V, part A (49 U.S.C. ch. 201-213) and 49 U.S.C. ch. 51. While information obtained in compliance with section 105 would not be used as direct evidence in rail safety enforcement proceedings and would not be released to a railroad, it would be available for impeachment purposes and would constitute background material, which might suggest further investigation and ultimately lead to the discovery of admissible evidence. Such admissible evidence might include a tape recording or transcript of the communication made by the railroad carrier or the testimony of a participant in the communication.

Section 106, "Technical Amendments Regarding Enforcement by the Attorney General," would amend 49 U.S.C. 20112(a) to clarify that the Federal district courts have jurisdiction to entertain four types of civil actions brought by the Attorney General at the request of the Secretary of Transportation: (1) to obtain certain types of injunctions; (2) to collect civil penalties or amounts agreed on in settlement of civil penalties, regardless of the type of case; (3) to enforce subpoenas under all of the rail safety laws; and (4) to enforce requests for production and for deposition testimony under the rail safety laws generally.

Currently, under Section 20112(a)(1), the Attorney General may sue in Federal district court to enjoin violations of, or to enforce, “a railroad safety regulation prescribed or order issued by the Secretary” under one of the railroad safety statutes (49 U.S.C. subtitle V, part A (hereafter, “Part A”)). However, there is no explicit provision in Part A permitting the Attorney General to sue to enjoin violations of, or to enforce, statutory provisions of the rail safety laws. With one exception, section 106(1) would authorize such civil actions with respect to all provisions of Part A. The exception is 49 U.S.C. 20109, dealing with employee protections against discrimination for whistleblower activities or for reasonably refusing to work in the face of an imminent danger of death or serious injury; section 20109(a)-(d) would continue to be enforced under the provisions of section 3 of the Railway Labor Act (45 U.S.C. 153).

Section 106(2) and 106(3) would bring the Attorney General’s enforcement powers under the pre-1970 rail safety statutes, as recodified, up to the level of those under the recodified 1970 rail safety statute. Section 106(2) would provide that the Attorney General may sue in Federal court to collect amounts in compromise of penalties imposed for violations of the older Federal railroad safety statutes (49 U.S.C. chapters 203-211) or amounts in compromise of penalties for violations of regulations prescribed or orders issued under 49 U.S.C. chapters 203-211. Currently, three different provisions are relevant. First, section 20112(a)(2) authorizes the Attorney General to sue in Federal district court to collect a civil penalty imposed or amount agreed on in compromise under 49 U.S.C. 21301, which applies only to violations of a railroad safety regulation prescribed or order issued by the Secretary under 49 U.S.C. chapter 201 (formerly, the Federal Railroad Safety Act of 1970) and, as would be added by this proposal, to violations of 49 U.S.C. 20154 dealing with the National Crossing Inventory. Second, section 21302(b) of title 49, U.S. Code, authorizes the Attorney General to sue in Federal district court to collect a civil penalty referred for collection by the Secretary for violation of 49 U.S.C. chapters 203-209 (Safety Appliances, Signal Systems, Locomotives, and Accidents and Incidents, respectively) or of regulations or orders under those chapters, but not to collect an amount agreed in settlement of claims for civil penalties for such a violation. Third, section 21303(b) of title 49, U.S. Code, authorizes suit for penalties for violations of 49 U.S.C. chapter 211 (Hours of Service), but not to collect amounts in compromise of penalties for hours of service violations. Section 106(2) of the proposal would amend section 20112(a) to clarify that the Attorney General is authorized to sue in Federal district court to enforce agreements in settlement of claims for penalties imposed by FRA for violations of the older railroad safety statutes or regulations and orders under those statutes.

Finally, section 106(3) would amend section 20112(a) to make explicit that the Attorney General may sue to enforce not only subpoenas issued under 49 U.S.C. chapter 201 but also subpoenas issued by the Secretary under any provision of Part A and to enforce requests for production of documents or other tangible things and requests for testimony by deposition under Part A.

Section 107 has a dual purpose. First, it would provide further notice to the regulated public of the effect of the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, 104 Stat. 890, 28 U.S.C. 2461 note, as amended. The most recent pertinent amendment to that law is the Debt Collection Improvement Act of 1996, Pub. L. 104-134, 110 Stat. 1321-358, 378. The Federal Civil Penalties Inflation Adjustment Act of 1990 as currently amended (“Inflation Adjustment Act”) requires that the maximum amount of civil penalties for violations of many Federal laws and regulations be

adjusted, based on a stated formula, for inflation. Both an initial adjustment and periodic adjustments, at least once every four years, are required. The Inflation Adjustment Act did not directly amend the civil penalty provisions of the substantive laws affected, but rather required the Federal agencies charged with enforcing those laws to issue regulations revising the penalty amounts. See, e.g., FRA's notice revising penalty schedules for violations of FRA safety regulations, 63 FR 11618 (March 10, 1998). Section 107 of this proposal would add a cross-reference to the Inflation Adjustment Act in each civil penalty provision for rail safety violations, explicitly stating the source of the agency's authority to set penalties higher than the amounts stated in the rail safety statutes.

Second, Section 107 would revise the civil penalty provisions to make them more uniform. In particular, Section 107 would amend 49 U.S.C. 21302 and 21303 to allow offset by the United States Government to collect civil penalties or amounts in compromise of civil penalties, as is provided in 49 U.S.C. 21301(b). This would allow the Government to deduct the amount owed by a respondent for violation of one of the older rail safety statutes from the amount the Government owes the respondent. Section 107 would also provide that civil penalties imposed under 49 U.S.C. 21302 and 21303 are to be deposited in the Treasury as miscellaneous receipts. These technical amendments would put enforcement of the older safety statutes on an equal footing with enforcement of 49 U.S.C. chapter 201 (formerly, the Federal Railroad Safety Act of 1970).

## **TITLE II—MISCELLANEOUS PROVISIONS**

Section 201 would eliminate several unnecessary provisions of the rail safety laws. These provisions have already been executed, or else they have otherwise become obsolete.

First, section 201 would strike three provisions requiring reports to Congress as having been executed: the second sentence of section 20103(f) (report on tourist railroads); section 20145 (report on detection of bridge displacement); and section 20150 (report on positive train control). The Secretary has already submitted each of these reports.

Second, section 201 would repeal section 20146, a provision to establish and authorize appropriations to fund an Institute for Railroad Safety at \$1 million per year for fiscal years 1996-2000. Congress did not appropriate funds for the institute and, in any event, the authorization of appropriations for fiscal years 1996-2000 has expired.

Section 202 of the proposal is intended to facilitate communication about the Federal railroad safety laws found in title 49, U.S. Code, subtitle V, part A ("Part A"), in order to improve the administration and enforcement of those laws, litigation under those laws, and compliance with those laws. To accomplish this purpose, section 202 would assign convenient, alternate names to the various chapters of Part A.

Currently, each chapter of Part A is denoted by a three-digit number and a verbal heading, as indicated in the following table listing the contents of the part:

CHAPTER

201.

GENERAL

203.	SAFETY APPLIANCES
205.	SIGNAL SYSTEMS
207.	LOCOMOTIVES
209.	ACCIDENTS AND INCIDENTS
211.	HOURS OF SERVICE
213.	PENALTIES

With the exception of chapters 203 and 213, each chapter of Part A generally corresponds to a single railroad safety statute that was formerly codified primarily in title 45 of the U.S. Code. In 1994, as part of the recodification of certain general and permanent Federal laws related to transportation, these railroad safety statutes were repealed, and their provisions were revised and reenacted without substantive change as positive law in title 49 of the U.S. Code. See Pub. L. No. 103-272 (July 5, 1994); H.R. Rep. No. 103-180 (1993). For example, chapter 201, “General,” contains all of the general and permanent provisions of the Federal Railroad Safety Act of 1970, as amended, except for the provisions on civil and criminal penalties.

In all cases, the current chapter heading does not restate the name of the statute that the chapter supersedes. In some cases, the current chapter heading does not even readily connote the name of the statute that the chapter supersedes. For example, to a person who has no knowledge of the rail safety laws, the heading “chapter 201, General” does not immediately suggest that the chapter is a recodified version of the Federal Railroad Safety Act of 1970. This is unfortunate primarily because decades, if not a century, of administrative interpretations, court filings, and court decisions have been developed under the statutes as they were named before the 1994 recodification. That body of administrative interpretations, briefs, and case law, which uses the pre-recodification names of the statutes, is more difficult to understand without a ready reference to those pre-recodification statutory names within the text of the current U.S. Code; this is particularly true for new practitioners and others who are not already acquainted with the original names of the statutes. Although the legislative history of the recodification law provides tables that may be used to identify the pre-recodification statute, the process is fairly cumbersome and dependent on material not as readily available as the U.S. Code.

Furthermore, not only old (pre-recodification) case law but also new (post-recodification) case law often uses the old names of the statutes. E.g., in Norfolk Southern Ry. v. Shanklin, 529 U.S. 344 (2000), the Supreme Court helpfully referred to the “Federal Railroad Safety Act of 1970” as if it still existed. Courts and litigators use the old names for the ease of reference they provide, but use of those names is not, in fact, consistent with existing law. With the new case law, the problem is that the old statutory name does not lead the reader to the new statutory citation and that the new case law also becomes difficult to integrate into the recodified statute. After a case provides an initial citation to the recodified section, all other references are to the original name of the statute, e.g., the “Locomotive Inspection Act” or the “Federal Railroad Safety Act of 1970.” If the novice misses the initial citation, the references to the old statutes can become confusing.

To provide a bridge between the old statutory names and the recodified statutes, Section 202 would incorporate into the U.S. Code one alternate name for each chapter of Part A or, in the case of chapter

203, an alternate name for each of two portions of that chapter. With respect to each of chapters 201 and 205-211, section 202 would establish one alternate name that clearly corresponds to the name of the statute that the chapter supersedes. With respect to chapter 203, the proposal would permit sections 20301-20304 and 20406 to be cited as the “Safety Appliance Act.” Section 20305 (formerly 45 U.S.C. 37), which is an independent provision that was never part of the old Safety Appliance Acts, would be permitted to be cited as the “Mail Car Inspection Act.” With respect to chapter 213, the chapter where the civil and criminal civil penalty provisions for all of the various Federal railroad safety statutes are now consolidated, the section would allow that chapter to be cited as the “Penalties for Railroad Safety Violations.” The names proposed in the bill would allow plainer discussion of the railroad safety laws on a daily basis within the legal community and more lucid written interpretations of those laws by FRA, litigants generally, and the courts. The names proposed in the section for chapters 201-211 would also help link the recodified statutory provisions in title 49 with the administrative interpretations, court filings, and judicial case law under earlier versions of the original statutory provisions. For example, section 202 would allow chapter 201 to be cited as the “Federal Railroad Safety Act,” thereby linking the reader to the case law on the Federal Railroad Safety Act of 1970, and allow chapter 205, “Signal systems,” to be cited as the “Signal Inspection Act,” which would lead the reader to the case law on the pre-recodification “Signal Inspection Act.”

There is precedent for enacting a provision such as section 202, both with respect to chapters that, like those in title 49, are positive law and with respect to those that are not positive law. For example, section 220501(a) of title 36 says that chapter 2205 may be referred to as the “Ted Stevens Olympic and Amateur Sports Act.” Title 36 is positive law. In addition, section 1403(a) of title 26 allows chapter 2 of subtitle A to be called the “Self-Employment Contributions Act of 1954.” Title 26 is not positive law.

Section 203 of the proposal would amend the railroad user fee provision found at 49 U.S.C. 20115 to accomplish several objectives. First, the existing statutory sunset date of September 30, 1995, would be repealed, and the Secretary would be authorized to assess and collect railroad user fees beginning with fiscal year 2003. Fees would be deposited in the general fund of the Treasury and be available for obligation and expenditure only as provided in advance in appropriations acts. Second, the Secretary’s authority to assess and collect railroad user fees would be expanded to include several railroad safety enforcement activities that were not included in the original user fee authorization. These include FRA activities in implementing the hours of service laws (formerly known as the Hours of Service Act, now codified principally at 49 U.S.C. chapter 211) and the hazardous materials transportation laws (formerly known as the Hazardous Materials Transportation Act, now codified at 49 U.S.C. chapter 51). Third, the Secretary’s authority to assess and collect railroad user fees would also be expanded to include safety-related research and development activities. Finally, section 203 would eliminate the annual user fee reporting requirement. The annual report associated with the original user fee program proved burdensome to prepare and was not particularly useful due to a lack of available data to compare user fee responsibilities among the various transportation modes.

Section 204 of the proposal would clarify the scope of FRA's safety program and authorize appropriations for that program. Subsection (a) would indicate that this program includes FRA's activities to carry out not only 49 U.S.C. chapter 201 but all of the chapters of 49 U.S.C. subtitle V part A as well as 49 U.S.C. chapter 51. In particular, FRA's safety program includes implementation of not only chapter 201 (formerly known as the Federal Railroad Safety Act of 1970), but also chapters 203-213 (principally the older railroad safety statutes, such as the law formerly known as the Hours of Service Act). In addition, FRA's safety program includes activities to administer chapter 51 (formerly known as the Hazardous Materials Transportation Act) and, in all modes of transportation, but particularly in the rail mode. See revised delegations to FRA to enforce the hazardous materials laws and regulations in all modes of transportation. 65 Fed. Reg. 49763, 49765 (Aug. 15, 2000), amending 49 C.F.R. 1.49(s)(1).

Subsection (b) would authorize appropriations for FRA's safety program for four fiscal years--2003 through 2006. A total of \$146,589,000 would be authorized for fiscal year 2003; this amount includes two components: (1) \$118,264,000 for FRA's safety and operations program and (2) \$28,325,000 for FRA's research and development program. The authorization levels for fiscal years 2004 through 2006 would be for such sums as may be necessary.